

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2055.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	September 12, 2003
DATE OF REPORT:	October 17, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 19, 2003

COMPLAINT ISSUES:

Whether the Shelby Eastern Schools and the Blue River Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written.

FINDINGS OF FACT:

1. The Student is nine years old and eligible for special education and related services due to health impairments (Tourette's syndrome and ADHD) and a visual impairment.
2. The Student's individualized education program (IEP) was developed by the case conference committee (CCC) on December 2, 2002, when the Student was in third grade, and remained in effect at the beginning of the 2003-2004 school year when the Student was in fourth grade. The CCC reconvened on August 25, 2003, and made some revisions to the IEP. However, because the Complainant removed the Student from the school corporation of legal settlement on or about August 26, 2003, this Complaint Investigation pertains only to the IEP as developed December 2, 2002. The Student has been enrolled in a neighboring school corporation as a cash transfer student under IC 20-8.1-6.1-3.
3. The IEP called for placement in the general education classroom with special education and related services provided during the instructional day. The IEP required a variety of classroom accommodations, consultation support from the special education resource room, behavioral consultant services one time weekly in group, and occupational therapy (OT) services one time per week. Consultation support was to be provided by the mild disabilities teacher who was the Student's teacher of record (TOR) and did not involve the Student's spending time in the special education resource room. It is undisputed that the social skills group and occupational therapy services were provided. The TOR observed the Student in the classroom 2 or 3 times during the 2002-2003 school year. The third grade teacher and the TOR were able to confer frequently and regularly, as their prep periods coincided during the 2002-2003 school year, until the TOR went on maternity leave as of April 7, 2003.
4. The Student's IEP provided for a pacing accommodation of allowing breaks.
 - (a) During the 2002-2003 school year, the Student was allowed some breaks, including breaks during tests, but the School acknowledges that breaks were not allowed during instruction time.
 - (b) During the first week of the 2003-2004 school year, the Student was not given breaks, but was sent to the hall and deprived of recess as consequences for unacceptable behavior.

5. The Student's IEP provided for the accommodation of ignoring specific behaviors. No specific behaviors were identified as the behaviors to be ignored. According to the TOR, this accommodation was designed to prioritize the Student's major behavior issues, as identified in the Behavior Log. It was the Complainant's understanding that, in addition, the behaviors to be ignored included those that are symptoms of the Student's disability, including motor tics and vocal tics identified by the Complainant in materials that the Complainant provided to the principal or classroom teachers.
6. The Student's IEP provided for the instructional accommodation of repeating directions.
 - (a) During the 2002-2003 school year, directions were repeated for the entire third grade class.
 - (b) The School provided no information pertaining to the utilization of this accommodation at the beginning of the 2003-2004 school year.
7. The Student's IEP provided for the instructional accommodations of having the Student repeat directions, providing a copy of class notes, and providing written copies of board work.
 - (a) The School acknowledges that, during the 2002-2003 school year, the Student was not asked to repeat directions in all cases. The Student was asked to repeat directions only on new or different tasks and multi-task assignments. The School acknowledges that copies of class notes and board work were not provided because no student in the third grade class was expected to take notes during class or to copy instructional material from the board.
 - (b) The School provided no information pertaining to the utilization of these accommodations at the beginning of the 2003-2004 school year.
8. The Student's IEP provided for accommodations in assignment by giving credit for oral participation.
 - (a) The School acknowledges that credit for oral participation in class was not given during the 2002-2003 school year because grades were based on assignments and tests rather than class participation. Credit was given for oral responses to spelling tests from and after November 15, 2002, when the third grade teacher began accommodating the Student by conducting an oral spelling bee immediately after the weekly spelling test, with adjustment of the Student's spelling test score for words spelled correctly orally. At least one Reading Unit Test was also re-administered orally and re-graded.
 - (b) The School provided no information pertaining to the utilization of this accommodation at the beginning of the 2003-2004 school year.
9. The Student's IEP provided for a pacing accommodation by omitting timed situations, allowing extended time for testing, and allowing the Student to read tests aloud before answering questions.
 - (a) The Student was allowed extended time on ISTEP+. The School acknowledges that, during the 2002-2003 school year, the classroom math program involved the use of daily timed fact practice sheets that were not graded. The Student was allowed extended time on graded math assessment tests. The School has offered no information pertaining to the use of these accommodations in connection with subjects other than math, and the School has offered no information about allowing the Student to read tests aloud before answering.
 - (b) The School provided no information pertaining to the utilization of these accommodations at the beginning of the 2003-2004 school year.
10. The Student's IEP provided for accommodations in assignments by allowing assignments to be completed in cursive or manuscript.
 - (a) At the beginning of the 2002-2003 school year, the third grade teacher notified all students and parents that, during the first grading period, students could choose between printing and cursive, and beginning with the second grading period, all students would be required to write in cursive. The Student utilized manuscript printing on, and was given credit for, some assignments and tests completed in manuscript printing, when the rest of the third grade class

was required to use cursive writing. A review of the Student's work revealed no instances in which the Student's grades were reduced for using manuscript printing.

- (b) The fourth grade teacher would have given the Student credit for work done at home during the week of August 18 — 22, 2003, if the Student had returned to the School. Some of this work was written in manuscript printing.

- 11. The School acknowledges that the Student's IEP was not read by the fourth grade teacher until the evening after the first day of school in the 2003-2004 school year. The Student's IEP contained a statement, as background information, that the Student requires strict guidelines and boundaries for behavior. The fourth grade teacher interpreted this statement as an authorization or requirement to deprive the Student of recess for disruptions in the classroom. The Student's IEP called for preferential seating, teacher proximity, and reducing/minimizing distractions. However, it was not until the third day of the 2003-2004 school year that the Student's desk was moved next to the teacher's desk.

CONCLUSIONS:

Findings of Fact #3, #6(a), and #10 indicate that the Student's IEP was implemented as written with respect to services and certain accommodations during the 2002-2003 school year. Finding of Fact #5 indicates that it is not possible to determine whether or not the accommodation to "ignore specified behaviors" was implemented, as the meaning of this accommodation is not apparent on its face. Findings of Fact #4, #6(b), #7, #8, #9, and #11 indicate that various accommodations required by the Student's IEP were not implemented as written. Therefore, violations of 511 IAC 7-27-7(a) occurred.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

On or before November 14, 2003, Shelby Eastern Schools and the Blue River Special Education Cooperative shall reconvene the Student's CCC to review and revise the Student's IEP. The revisions shall include, but not be limited to, clarifying the meaning and applicability of various accommodations and establishing a system for monitoring the implementation of the Student's IEP. The school corporation of legal settlement remains responsible for offering to provide a free, appropriate public education to the Student, even though the Student is currently enrolled elsewhere.